



## MEMORANDUM

**TO:** Heads of Federal Agencies  
General Counsels  
Agency Regulatory Staff

**FROM:** Thomas M. Sullivan  
Chief Counsel for Advocacy, U.S. Small Business Administration

**DATE:** August 22, 2002

**SUBJECT:** Executive Order 13272 – Proper Consideration of Small Entities in Agency Rulemaking

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On August 13, 2002, President Bush signed Executive Order 13272 requiring federal agencies to implement policies protecting small business when writing new rules and regulations. The purpose of the Executive Order is to ensure that we work closely together to ensure that small business issues, particularly as they relate to disproportionate regulatory burden, are addressed as early as possible in the regulation writing process.

The order requires all federal agencies to submit, within 90 days of the date of the Executive Order, their plans on how they account for small business in their rulemaking process. The Executive Order gives agencies 180 days to execute these plans and requires them to consider our comments on their effectiveness before implementation. The Office of Advocacy is excited about this opportunity to work more closely with federal agencies, such as yours, towards the goal of reducing the regulatory burden on small businesses.

Advocacy is required to notify the heads of federal agencies of the basic requirements of the Regulatory Flexibility Act (RFA) and provide training to those agencies on how best to comply with the RFA. We anticipate beginning intensive training this fall.

If you have any questions or concerns regarding the Executive Order or the RFA, please feel free to contact Claudia Rayford Rodgers, Senior Counsel for the Office of Advocacy, at 202-205-6804 or at [claudia.rayford@sba.gov](mailto:claudia.rayford@sba.gov). A copy of the Executive Order is attached for your convenience.

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# Presidential Documents

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**Title 3—****Executive Order 13272 of August 13, 2002****The President****Proper Consideration of Small Entities in Agency Rulemaking**

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1. *General Requirements.*** Each agency shall establish procedures and policies to promote compliance with the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*) (the “Act”). Agencies shall thoroughly review draft rules to assess and take appropriate account of the potential impact on small businesses, small governmental jurisdictions, and small organizations, as provided by the Act. The Chief Counsel for Advocacy of the Small Business Administration (Advocacy) shall remain available to advise agencies in performing that review consistent with the provisions of the Act.

**Sec. 2. *Responsibilities of Advocacy.*** Consistent with the requirements of the Act, other applicable law, and Executive Order 12866 of September 30, 1993, as amended, Advocacy:

(a) shall notify agency heads from time to time of the requirements of the Act, including by issuing notifications with respect to the basic requirements of the Act within 90 days of the date of this order;

(b) shall provide training to agencies on compliance with the Act; and

(c) may provide comment on draft rules to the agency that has proposed or intends to propose the rules and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OIRA).

**Sec. 3. *Responsibilities of Federal Agencies.*** Consistent with the requirements of the Act and applicable law, agencies shall:

(a) Within 180 days of the date of this order, issue written procedures and policies, consistent with the Act, to ensure that the potential impacts of agencies’ draft rules on small businesses, small governmental jurisdictions, and small organizations are properly considered during the rulemaking process. Agency heads shall submit, no later than 90 days from the date of this order, their written procedures and policies to Advocacy for comment. Prior to issuing final procedures and policies, agencies shall consider any such comments received within 60 days from the date of the submission of the agencies’ procedures and policies to Advocacy. Except to the extent otherwise specifically provided by statute or Executive Order, agencies shall make the final procedures and policies available to the public through the Internet or other easily accessible means;

(b) Notify Advocacy of any draft rules that may have a significant economic impact on a substantial number of small entities under the Act. Such notifications shall be made (i) when the agency submits a draft rule to OIRA under Executive Order 12866 if that order requires such submission, or (ii) if no submission to OIRA is so required, at a reasonable time prior to publication of the rule by the agency; and

(c) Give every appropriate consideration to any comments provided by Advocacy regarding a draft rule. Consistent with applicable law and appropriate protection of executive deliberations and legal privileges, an agency shall include, in any explanation or discussion accompanying publication in the **Federal Register** of a final rule, the agency’s response to any written comments submitted by Advocacy on the proposed rule that preceded the

final rule; provided, however, that such inclusion is not required if the head of the agency certifies that the public interest is not served thereby. Agencies and Advocacy may, to the extent permitted by law, engage in an exchange of data and research, as appropriate, to foster the purposes of the Act.

**Sec. 4. Definitions.** Terms defined in section 601 of title 5, United States Code, including the term “agency,” shall have the same meaning in this order.

**Sec. 5. Preservation of Authority.** Nothing in this order shall be construed to impair or affect the authority of the Administrator of the Small Business Administration to supervise the Small Business Administration as provided in the first sentence of section 2(b)(1) of Public Law 85-09536 (15 U.S.C. 633(b)(1)).

**Sec. 6. Reporting.** For the purpose of promoting compliance with this order, Advocacy shall submit a report not less than annually to the Director of the Office of Management and Budget on the extent of compliance with this order by agencies.

**Sec. 7. Confidentiality.** Consistent with existing law, Advocacy may publicly disclose information that it receives from the agencies in the course of carrying out this order only to the extent that such information already has been lawfully and publicly disclosed by OIRA or the relevant rulemaking agency.

**Sec. 8. Judicial Review.** This order is intended only to improve the internal management of the Federal Government. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.



THE WHITE HOUSE,  
August 13, 2002.